/163 cont./

241 of mercantile economy. The case is all the more striking be-
441 cause, in the old rural order, a number of things are removed
237 from commerce: milk, for example, which is never sold, and
straw, which is carelessly left on the fields. But the animal ma-
(675) nure not only forms the tacit counterpart of the pacts of trans-
hûmance or of common pasturage, but can even give rise to
ciphered dealings.

[692] These particularities appear in full light in an arbitral de-
cision of the fqih Belwâh', of the Bas /Lower/ Demsira, a magis-
trate whose montagnard appurtenances (he was born in the wild
valley of the a. Mh'nd u Musa, which the Bwibaun separates
from our a. Lh'sen) render very revealing judgments of the view
of a milieu intent on compromising between the law and the an-
cestral custom.

691 It is a matter of litigation between a sâkin, "a precarious
692 resident," and the master of the house, who suddenly asks him
237 for a rent of equivalence. The other one retorts by demanding
427 the price of the manure of his beasts. The fqih, by dint of cita-
tions from ᶜAmal, came to establish that the first demand was
unjustified, and the second one justified. He knowingly refers to
the rural custom, which does not recognize rents for this kind of
installation: without doubt (and although this is unavowed) be-
cause such pacts depend upon the clientele and thus contain a
deep antinomy with the contractual law. On the other hand, it
is not at all the same for animal manure: this is a commodity,
which comes to the owner of the animals and, on the other hand,
cannot enter in as a gracious counterpart of hospitality.

237 Such a case in point gives a measure of the importance that
24 fertilizer assumes in this system. The great suppleness, if I may
[171] venture to say it, of the European peasant economy, to wit, the
correlation between livestock breeding and cultivation, is thus
found again here, evident and calculable. The accumulation of
(342) the manure in the stable, agnur, often arranged on the ground
floor of the house, its handling, and its being placed in piles be-
fore the tillage of autumn and spring, its dispersion on the field:
so many practices to which the high-valley cultivator devotes

1: Berque--295 Z-5 (ca. 1950) 1955 MW11 Shluh MW11

[Imt'ddan]
[Bulᶜwân]

613 /211/ Undoubtedly one observes a certain differentiation be-
621 tween Tinwalin and Tamezgurt, on one hand, the two other villages of the tetrapolis, Tagunit and Tamt'ddit, on the other. But, with this exception, each subgroup is well represented in the different grounds of the canton.

423 This characteristic appeared clearly on the occasion of pro-
691 ceedings which in 1951 set the Imt'ddan against one another concerning a vast albur utilized half-pasturage, half-tillage, on the E. contrefort of the Tamjlucht. A judiciary transfer was made at the summit of the Azuran. The titles were contradictory; leases, sales had come into play. And, even more, irregularities of an ownership which always accrued to the strongest, but without annulling the right of the weakest. In fact, within this ground, three families, profiting from their preponderance, disputed a quarter favorable for rye called Uz'z'igat (1,900 meters). The summit is not far from it. From there, the view plunges, to the E., over the Kattos, the Wafagga; to the W. and to the S., over a landscape with magnificent folds, closed by the barrier of the Afuzar and, in the background, by the Atlasic crest. This high plateau, all around the crop terrain, is studded with idughas,
[692] "summer shelters." The jemâa deliberates. An agreement is
[634] finally concluded. The Uz'z'igat is to be allotted among the 19
[613] ikhs-s resulting from the fractioning of the first Imt'ddan families. A brief dispute had tended to exclude the branches with the most
[634] eccentric habitat, such as those of Tinwalin. But, instructively, the taqbilt solidarity and the landed-property vocation that it implies will outweigh the dispersion of habitat and the decay of the bond. It could not be otherwise. Analogous solidarity prevails elsewhere, as has been seen, in a matter as favorable to privative appropriation as the harvest of almonds.

G) Bulᶜwân, estuary of the montagnard system

133 The Tagoyyamt ford (740 meters), where the traditional
361 route from the Dir crosses the Oued Seksawa, here called Lwâd n-Qihra, or Asifl-lqihra, leaves a village on the right, Bulᶜwân, the colony of which, Taqennurt, situated not far away, on the

/264 cont./

42 627 In the very widespread formula of the resolutory sales, improperly called rrahn, or, in the acts, thunyâ, and which correspond to a very ancient landed-property mode of this milieu, the debtor, who is also the owner of the land, has available a means [692] of interrupting automatically the right of the lessee. This is /265/ to deposit an "obole" /obolus/, tauqit, tamuzunt (1).

1. And moreover istiman and l'arbûn. Evidently the idea of deposit itself has a very complex past and meaning. Still without any idea of systematic comparison, and, if one wishes, only for "curiosity," let us say that certain aspects of this tamuzunt of the Chleuhs /Shluh/ are not free from suggesting the formality of the aes "whose restitution brings about liberation of the land" (H. Lévy-Bruhl, Quelques problèmes de très ancien droit romain /Some problems of very ancient Roman law/, p. 144).

in the hands of some sort of auctoritas: today a common magistrate, formerly such-and-such a fqih, notable or "marabout." In the Bas /Lower/ Seksawa the process is even more direct. When it is a question of orchards, the obole will be deposited on the pile of olives in the very course of the gathering: this puts an end to the usufruct of the lessee. Rationalist reinterpretations have naturally assimilated this procedure to a settlement by "deposit," l'arbûn. But this latter notion is itself complex. What one notices most concretely in the operation described here is that the gesture causes a break in the parties' respective situation concerning the field. As for the partimonial bond, the owner's legitimacy has never ceased. But it cut itself off from "legitimate occupation" (verb âmmer). The latter now reintegrates the initial right, an expression that we find again word for word in a writing from the eighteenth century. Henceforth, the lessee is usurping. More

/284 cont./

346 794 I pass the constructions that are inhabited by the present foqra, administrators, rather than holders of the benefic power, above all devolutionaries of the "benefice" tisura. Made of stone arranged in a straight line, on two and sometimes three stories, in joined assemblages, according to the powerful techniques of the mountain, they present nothing remarkable, except 794 for their paradoxically urban aspect. However, as this small 173 group materializes and exploits the tradition of the sanctuary, it will not be useless to investigate the oral chronicle concerning it.

It is composed of three families: the a. H'ammo, the a. Ali, and the a. Lh'sen, besides the habitual fringe of allogenes [784] and refugees. The reduction of the effective force of the latter two families in relation to the first is attributed to a curse that the saint cast upon them as penalty for an ambush in which they traitorously massacred the a. Musa. They had invited them to a tiwilt, "banquet-palaver." Having led them into a room upstairs, below which they had piled stalks of maize, they smoked them out. The unfortunate ones who jumped out the window were slain. Only one escaped. Even he was killed farther away. [211] Thirty-three slabs, each representing one of these human lives, have been, it seems, imbedded since then in the ceiling of the maqqura of a mosque at T'abya. Magic and official cult are joined here with cantonal patriotism.

[784] /285/ What the saint is punishing in the case at hand is not only the treachery of the two families, but the crime, whose victims were pure descendants of the royal line. A coincidence 776 to think about. Quite naturally this leads one to investigate as to [778] whether there are not other characteristics that can be revealed by an examination of the places and which would put one on the same track. First of all, this sidi bu Lqnadel, "the saint with the [619] candle ends," corresponding in Berbère /Berber/ to a bab n-tfawin, [634] which would also signify "the man with the proofs," would be none other than H'addo, the eponym of the a. H'adduyws of the highest valley, founder of the medieval dynasty. One bestows on [796] him each year no more than a little merrymaking: barely a few [443] cooked chickens, which the children eat. But three generations [692]

/285 cont./

ago it was he who presided over the Thursday market, and it was in his edifice that the moqaddem of Lalla Aziza remained to settle the litigations. If one compares this H'addo the Yah'ya buried in the "house of Lalla Aziza" with the Sliman buried at Anchkrir not far from an Azzô, the identification with at least three of the personages mentioned by Ibn Khaldûn will be confirmed. A certain liaison of the historic cycle and the ritual cycle is thus suggested by the only archeological indications. How this liaison could have been established, and, in that case, what distortions the rite has printed on history, this is what has been examined elsewhere. But let us salute again here the synthesis and its profound relations with the functioning of a group life.

The Fisc of the Holiness

The same impression will emerge from an institutional analysis of the system whose topographic situation we have just studied.

What is striking at first is the relative importance of the perimeter of appeal. Here again, let us start with the most concrete elements, that is, the geography.

Expressed as obligation for offerings at the time of the two annual feasts, or "stipulated subscription" village by village all during the year, the attraction of Lalla Aziza is also expressed in agrarian attachments. Let us pass by her appanage of Anchkrir, identifiable with an old center of Seksawa history. Much farther downstream, in the lower valley, at Ih'ançalen, two "parcels" called, with a play on words, id'aren n-Lalla Aziza, "the feet of L. A.," frame the river on both sides: a sort of portico which the current passes and which perhaps indicates an old rite of passage. We are still, it is true, in Seksawa, among these a. Abdella whose name refers to the not very orthodox agellid of the fourteenth century. But in the plain itself, at Gemassa of the Fruga, the saint has available two /286/ shares of water on the Lalla Çfiyya wadi. According to the oral traditions, in ancient times the people of Gemassa and the a. Abdella contended for the water of the river by force. The conflict ceased only with the

/289 cont./

794 The fund coming from all these contributions is subjected among loqra to egalitarian division. They put it together with the product of the offerings, oboles, etc., collected all during the year in the box, rrbi^{c}t, placed in the zaouia, under the name of tisura, plural of tasarut, literally: "keys," analogous to the Arabic futûh'ât. This benefice is defined by those interested as a lh'obûs, "pious foundation." The analogy is only a rough one. 794 Violent competitions between rightful claimants, on one hand, 578 between moqaddem and other beneficiaries, on the other /290/ hand, between men and women also often arise and necessitate [691] the intervention of justice. One of these conflicts broke out in 1949 and had to be settled by the assembly of all the Seksawa, [692] constituted as a supreme court, as parties interested in the highest degree by the questions touching upon their saint. An initial deduction of one tenth was set apart for widows and daughters in a state of need, the rest forming the object of an egalitarian division among all the foyers, with the reserve of a preference share for the moqaddem.

The Legend

773 The largest part of the revenues come at the great moments [794] of collective tension of the two annual feasts. But before even [796] describing these two feasts, and first from the outside, before any [128] interpretation, as it is time to become acquainted with the legend, I shall give below the account of it that was collected about forty years ago, with an exactitude not suspected of sociological ambition, by the French naturalist Brives, the memory of whom still survives in the valley because he was "the friend" of Lalla Aziza (1).

1. Brives, Voyages au Maroc /Travels in Morocco/, 1909, pp. 256 sq.

We are on the terrace of a house which faces, from the other side of a ravine, that of the saint. All the terraces blaze out

/322 cont./

792 [776] Sibâ^{c} 1 is a saint whose memory survives at the zaouia of Takerkuzt (1).

1. Today submerged by the waters of the dam of the Nffis.

to the S. of Marrakech, from where this volume comes. This mu^{c}âchara that the exaltation of a young soul solicits is the initiatory commerce.

128 Let us thereupon terminate the study of religious structures, the outline of which would have remained inexact if, besides their connections to the rural group, one had not also mentioned what they let pass in sallies beyond this group. All that we can say now no longer concerns the Seksawa, not even the Chleuhs /Shluh/ as such. Let us give the floor to E. Dermenghem, explorer touched by Maghrebi holiness.

/323/ A Juridical System

I. Techniques of Settlement

Let us go back some thirty years, that is, before the institution of the present Tribunaux Coutumiers /Customary Courts/. That is little for a historical investigation. It is sufficient, nevertheless, to reveal a triple order of phenomena, corresponding to three layers of the social reality, as well as to three kinds of techniques.

691 [692] Let us first set aside the more or less important litigations in which the authority, jemâa, amghar, or moqaddem, arrogates to itself the decision. The expansion of personal power is limited here by a very strict tradition concerning the devolutions of competence. As will be seen, it is above all a question of matters concerning the public order, that is, bringing into play the internal structure of the group or its combination with neighboring groups. 691 695 A second category of litigations, the most common ones in a rural society, is under the jurisdiction of sworn law. We

/323 cont./
691 have studied it above. It aims at re-establishing a distributive
695 integrity among riparian patrimonies, thus bringing into play an agrarian order on whose exact nature it has been necessary to reserve judgment.

423 Finally there are the conflicts of personal or landed-property
691 order. The procedure — it is indeed then a matter of procedure — is in two parts. The temporal authority, made cognizant first, brings about and records the agreement of the parties in the person of a muh'akim, most often a religious or scholarly individual. Who is this personage exactly?

Judgment or Arbitration?

623 The judiciary attributions in Chleuh /Shluh/ country are en-
634 trusted today to a collegial Tribunal. This is an extension of the
619 former competence of the jemâa, which customarily dealt with
692 only public law and the first phase of the judiciary instance properly speaking. But this extension doubtlessly is not exorbitant of a lively communitarian tradition, which is explained by the fact that, in contrast to the feudal forms observed on the plain, it impressed the reformer.

/324/ On the other hand, and on the historical plane, nothing permits affirming that in a number of epochs this extension of
[627] competence was not produced spontaneously. The demarcation between the natures of the public law and of the private law is tenuous since most of the landed-property litigations arise from conflicts between groups or subdivisions of groups, which is also the theme of the public life of the canton. Some written traces of settlements of this sort authorize the hypothesis.

/The following two paragraphs are in small type in the original source./ An act of 982 Heg.: 1572, concerning the well-known gens of the a. D'alh'a and some persons from Tawanghast, mentions that one of those interested "produced, in the bosom of the jemâa, the act of guarantee of his mother's dower," kharraja ᶜala wasat'i'l-jamâᶜa. In this affair, obviously of private law,

623 /324 cont./
634 the intervention of the collectivity appears to have a jurisdic-
619 tional or notarial value. This testimony is important. It is not
692 at all isolated.

In the old Seksawa titles one often finds mention of the jemâa not only as Senate, or as guardian of public order, but in [693] judiciary or arbitral attributions. A writing of 1042 Heg.: 1630, in a. H'adduyws, mentions it sitting simultaneously with a "cadi." More recently, in 1315 Heg.: 1897, a long piece relates the meeting of the entire jemâa of the Idma, with its two moqaddem-s, in order to resolve a serious matter, which, taking account of the reticences of the text, appears to have been the rape of a notable's daughter.

The jemâa, moreover, is always present, like the chorus of old tragedy. But it is also often the protagonist of the piece, [792] either if it exercises its function openly, or if it acts only indi- [794] rectly, through personages who tend to differ with it or even compete with it: profane chiefs like the moqaddem or the amghar, men of piety, of study, or of benediction, like the t't'aleb, the fqih, the agurram.

692 There is one point, however, where a division of labor seems
693 always to operate. This is in the landed-property and successoral procedure. The distinctive trait in this is the dualism. The affairs, first presented to the chief or to the jemâa, are referred to a personage who has been agreed upon by the two parties. In this instance, it was most often the marabout of the zaouias of Assttif or of sidi Ah'med u Âli or of Buᶜanfur, far in the plain. Sometimes, too, it was a specialist called "cadi" (1).

1. On these personages in the Atlas and the Sous, cf. J. Berque, "Un glossaire notarial arabo-chleuh de Deren (XVIIIᵉ siècle) /An Arabo-Shluh notarial glossary from the Deren (eighteenth century)/," R. afr., 1950, pp. 388 sq., with references to jurists of the South.

/324 cont./

693 692 The existence of this latter is /325/ intermittent. It appears most often as linked to the progress of personal power and naturally also to the nearness of the towns. He is supported, but also imposed and oriented by the chief. Nevertheless, he always judges "by mutual accord," s-tarad'i, and his intervention is challengeable, like that of any other arbiter. But is it indeed a matter of an arbiter? Some old documents will permit analyzing the institution better.

175 634 69 /The following four paragraphs are in small type in the original source./ There is first an act of 923 Heg.: 1518, of the a. H'adduyws, recording a verdict rendered in a landed-property case, and which gives to one of the parties the ownership of parcels seized as counterpart of the expenses of mortuary services. And this in a great meeting of Seksawa and Idaw i-yzimmer. The h'âkim bases his authority upon the mutual and written appeal of the two adversaries to his court, called court of the charᶜ /Sharia/, "of the law": baᶜda rid'â'i-him bi-majlisi'ch-charᶜi laday-nâ bi-rasmi't-tarâd'î.

Another act of 1109 Heg.: 1698, of the I. Geryun, in very bad Arabic, relates a complete procedure. The moqaddem and [794] the jemâa place the case of two parties before a fqih designated by lot, baᶜda d'arabat la-hum al-qurᶜa, "so that he may strike them with the sword of the law." It is a matter of a habous [681] /wakf/ lawsuit. The two litigants promise, in case of nonappearance, to pay into the hands of the moqaddem three mithqâl-s in penalty. Initial citation and appearance in court, designation of a judge, referral, fine in the event of nonappearance: all the moments of the first part of the procedure are brought to light here.

175 69 Again a tarâd'î consignation dated from 1122 Heg.: 1710, and coming from two personages from Alus, who solemnly empower a "cadi" of the a. Tikssit to act for them in making a settlement. "They are in agreement (to place) the charîᶜa of God in the hands of the fqih such and such ... for all that has become clouded between them in the case of land, trees, houses,

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692 The appeal to an eminent sapience (2),

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114 2. In the thirteenth century, al-ᶜAbdarī shows the people of the Sous literally seizing passing scholars, Cherbonneau tr., Journal asiatique, IV, 1854, p. 151, and B. Nat. ms 2283, fol. 5, l. 5 de fine sq. Notations of the same order in Léon, on the side of the present Imintanout, Description de l'Afrique /Description of Africa/, Ch. Schefer, 1898, t. 1, p. 219 (in "Semada," with arbitration described in full), and citation in L. Massignon, Le Maroc dans les premières années du XVI^e siècle /Morocco in the first years of the sixteenth century/, 1906, §106, p. 127. It is necessary, however, to set against this aspect (exteriority of the judge) what Léon tells us about the veritable "parliament" that functions in ait Daud in a seemingly indicated professional climate (ibid., Schefer, p. 153).

Examples of dualist procedure in a. Wawzgit (De la Porte des Vaux, "The a. W[illegible] la vallée du Zagmouzen," in CHEAM, p. 111), the Anti-Atlas (Huot, "L'organisation de la justice dans les tribus de l'Anti-Atlas," in CHEAM, p. 15).

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692 the talismanic action of Arabic writing are certainly what characterize this instance the most, rather than the arbitral aspect suggested by its terminology. /327/ There are no conciliators here, but magistrates, and better yet liberators of forces. Forces that the milieu considers transcendent and which it carefully keeps at a distance.

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The Community As Organ of Juridical Creation

"Public law," we would say. To what extent is such an appellation legitimate? In fact, despite the development of the contract in this society, the statutory aspect of many individual relations on the one hand, their implication with collective factors on the other, finally the omnipresence of a communitarian life whose adjuvant force and the feeling of well-being and normalcy that it inspires have for ransom a very extended gamut of sanctions, continually entail the interference of the private and of the public, of the civil and of the penal.

Such an interference will go by itself into an "archaic" law, and the fact that one sets up here a question that elsewhere would be pure scruple, and in addition anachronistic, indicates to what extent the present investigation has believed it necessary to turn aside, apropos the /383/ Seksawa system, and Chleuh /Shluh/ system in general, from such commonly accepted ideas, those of the late Marcy, for example. The distinction of public law and private law is related moreover, especially perhaps in Seksawa, to aspects of expression and elaboration rather than to the nature of things. But aspects how strongly contrasted! Up to the contemporaneous period the jemâa has remained the penal judge. On the other hand, we see from the oldest period that an external magistery is called upon in order to recognize goods and persons. But, in addition, and on this very matter, the legislator is none other than the group.

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This account has sufficiently marked all the traits of indivision, confusion, or junction between this communal law, as it is expressed or is conceived itself, and the fiqh. As in several departments of private law, it is in a sort of contractual excess that a surpassing of the model, thus a useful alibi, seems to have been sought. This law has outbid a law of citizens and merchants by the meticulous extreme of the cheap-Jack. With its being so close to magico-religious bases, to the communitarian vehemence of the group, it is not by an oath that, like our good towns of the

/388 cont./
671 of the person: shares of benefice of a saint, tisura (trans. of the
675 Arabic futûh'ât), of the right to mutual assistance, tiwizi, of
421 "protection," etc. There one /389/ is at the very antipode of
182 what one imagines of an "ancient" law.

What is to be said about this division of labor that not only
671 qualifies, in the landed-property procedure, judges outside the
182 group, but jealously denies competence to the temporal chief?
[692] These careful delimitations, although undoubtedly from the most authentic foundation of the Chleuh /Shluh/ society, appear irreducible to archaism. Nevertheless the splitting of the judiciary instance obeys exigencies of recourse to the outside, of pause in the course of the joust, and, in short, of rejection of responsibility by the group, which express obscure traditional sentiments. This gives rise nonetheless to a procedure of scholarly type, written and aspiring to cityness. Traits undeniably "advanced": condemnation by default that the codifications anticipate, fine for nonexecution of the sentence or for failure to answer a summons, this last motif recurring constantly.

681 The penal law, up to a very recent period, has been admin-
182 istered by the jemâa. The latter has never really given it up. It
[634] is even for this purpose that it deploys the most initiatives and most willingly exercises its legislative function. But let us note that this penal law, based on pecuniary composition, a composition duly tariffed, evinces a singular institutional maturity. While the gentilitial structure inspires the agrarian order, it is effaced, in the penal one, before something that is clearly of the public law, and felt as such.

695 The plural oath has retained its role. It concludes all litiga-
182 tions that the writing does not determine. But this restriction is
[691] already quite important. And moreover, even where it keeps all its value, the oath has been driven into a reduced position: no longer of sworn law -- but of a second element of a procedure begun on an intellectual and profane plane. The richness of the elements of magico-religious order that one finds here and there in this part of the system cannot efface the contrary aspects, which are also striking. Certainly it is possible to suppose that

*631 [174] /168 cont./ conclusions of our research on the origin of the leffs will soon come, as a matter of fact, to confirm it and increase its value.

X. The factitious confederations. -- The confederations that we have just studied still form in our day the most ancient historic groups of the Masmouda.

The Ida Ou Tanan give us a different and unique example in the South of Morocco: that of a recent and factitious confederation, but whose organization satisfies permanent necessities and which has existed for several centuries (3).

[175] [619] 3. Alone among the historians and geographers, Ibn Khaldoun /ibn-Khaldun/ mentions the name of the Ida Ou Tanan, without its apparently being applied to this region. The "Youtanan" appear to him as one of the subdivisions of the Mesfiwa, belonging to the tribe of Assaden of the Masmouda, Histoire des Berbères /History of the Berbers/, Vol. II, p. 160.

*631 175 [648] [792] [642] At the time that the penetration of the Makhzen /makhzan/, which was being carried out /map appears here/ /169/ through the south of the Haha and the Sous plain, was going to endanger the independent fractions of the extreme tip of the western Atlas, a marabout, Sidi Brahim ou ᶜAli, disciple of Sidi Saᶜid Ou ᶜAbd en Naᶜim, according to the local tradition, was able to give the Berbères /Berbers/ the constitution that was going to permit them to found a small state locked in the isolation of the mountains and high plateaus near the Atlantic. Three tribes, with equal rights, and doubtless equal in strength at the beginning, make up the confederation. They are the Aït Tinkert, the Aït Ouᶜazzoun, the Ifesfasen, who, however, in our time live under different political regimes and regulate their internal affairs as they think fit. But twice a year, during the "mousem" /festival/ of the patron saint of the country, each tribe delegates representatives in equal number, who settle according to a fixed ceremonial and by common accord "under the wild olive tree" of Sidi Brahim ou

*631 619 [796] [692]

TEXT CONTINUED ON PAGE 219

/169 cont./

*631 ʿAli all the disputes that might have arisen among the limitrophe
619 fractions. When an external danger, especially the conquest of
[796] the Makhzen /makhzan/, comes to threaten the country, the
[692] general "ajmoʿa," the meeting of all the tribes under arms, is decided at the Souk el Khemis of Imouzzer, at the common frontier of the three tribes. Here, in spite of the divergence of local interests, despite the centrifugal tendency of the three tribes who find themselves in contact with different populations, the will to preserve independence vis-à-vis the foreigner has been strongest; it has sufficed in order to constitute an irreducible bloc
*631 made up of the most diverse ethnic elements. Here one perceives
*634 the strength of the Berbère /Berber/ ideal of independence, alone
619 capable of agglomerating the social dust of the small elementary states; the permanent threat of the Makhzen /makhzan/ has sufficed to make the parceling of the country disappear, as if it were necessary, in order to create in the amorphous mass of the "taqbilt" some solid cores of resistance, to strike it with repeated blows (1).

1. One can compare the example of the Ida Ou Tanan with that of the independent tribes, neighbors of the summits of the Tichka, under the pressure of the kaids of Bouaboud and of Tagontaft. In the course of recent years the minor chief of the "taqbilt" of the Aït Haddiyous, Ahmed ou Moulid, has been dreaming, it is said, of uniting the scattered debris of the ancient, vanished confederation of the Genfisa, in order to reconstitute, for his profit, a republic of the Tichka. By this last means, the "amghar" would have attempted, thanks to a policy of union, to save the Berbère /Berber/ traditions from the inevitable ruin that threatens them. Our intervention came to overthrow these projects and changed the balance of the forces in the high mountains. But if the efforts of this minor chief had succeeded,

/223 cont./

*634 789 184 the Gedmiwa, these privileged inflas do not have /224/ magical powers; they appear to us to be no more than the aides of the moqaddem, "ʿawan," transmit his orders, give him advice, and assist him in all circumstances. As proof of their devotion, they deposit guns or daggers in the leader's house as a pledge.

*634 554 IV. The moqaddem. -- Each year the council of the canton meets in order to receive the administration accounts of its president, the "moqaddem" (1),

> 1. From the Arabic "qeddama," to place in front of oneself; literally, the one who is put at the head.

and to proceed to the nomination of his successor. According to ancient tradition in the Haut-Atlas /High Atlas/, the moqaddem must be an effaced man who at every moment considers himself the spokesman of the council. As his name indicates, he is only the first of the "inflas," the one who precedes, who is placed in front. For all important affairs he consults the heads of the "ikhs" and the men of good counsel, and when he has to act unexpectedly, he hastens to have his decision approved. Most often, he is 666 613 chosen by turn in each village, sometimes his name is drawn by lot from among the heads of the "ikhs." In practice, however, *634 the role of the moqaddem has been greatly expanded; it is he who •692 is most often chosen as arbitrator in disputes. If the affairs pre- 554 sented to him are too complex, he names another arbitrator, a stranger to the canton, or a cadi of the vicinity (2).

> 2. The cadi's decisions are often solicited by notables who are afraid of getting an unfavorable sentence in their cantons, but who are, on the other hand, strong enough to have the decision of an outside personage respected or executed in their village. Sometimes, too, the judgment of the cadi is considered to be less

554 /224 cont./
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•[692]

/footnote 2 continued/ sullied by partiality than that of the inflas, whose rapacity is feared.

[585] [586] [428] Marriages and divorces are concluded in his presence. He conducts the proceedings for the apportionment of inheritances and then appropriates a small part of the estates. He punishes according to the ʿorf -- the custom -- crimes and offenses, and [681] imposes the fines that are proper for each mistake. The money thus collected is divided into three parts: the first goes to the moqaddem; the second is for the taqbilt, which the inflas consider that they represent completely in this circumstance; the last part constitutes a small reserve fund for the expenses of hospitality.

The moqaddem's authority varies according to his wealth [292] and personal situation. If he is already, because of the power [613] of his "ikhs," an important notable, he is seen, clothed in garb [571] /225/ of white wool, which manifests his high rank, to deliberate, to fix the round of hospitality, to accept the "ʿar" [754] /protector relationship based on a conditional curse/ of foreigners [574] who ask for protection, and to have given to one who offers him [43] a sacrifice some grain and walnuts by contribution of the whole [628] canton. He concludes alliances with neighboring cantons and [574] presides at the "tinoubga," festivals given on the occasion of visits by foreign warriors. If the moqaddem, on the contrary, is a man without influence, he effaces himself before the "inflas" or the "ʿawan," who compete to have all the disputes settled to the advantage of their family. When the year has passed, the [666] moqaddem brings the inflas together and calls for his replacement. As an exception his post is renewed for a year, "if his magistrature has been happy," but never longer.

[178] As a result of the general tendency toward the development of personal power, people in the Haut-Atlas /High Atlas/ in our day somewhat scorn the effaced moqaddems who abide by the ancient tradition, according to which they would be only the agents of their brothers. One who does not know how to speak

/228 cont./

*634 184 [178] /footnote 2 continued/ that the moqaddem is the base on which all the affairs of the tribe rest."

[613] /229/ Concord is difficult to establish in the bosom of the councils of inflas not provided with a moqaddem, where the only rule appears to be to maintain complete equality among all the *634 representatives of the "ikhs." In order to prevent discords and to 619 come to impose on the strongest groups the decisions made by the 184 other families in conformity with custom, it often happens that the small elementary states of the mountains come out of their isolation and join their neighbors: thus true tribal councils are constituted, in which each "khoms" delegates its inflas. In the Anti-Atlas such are the assemblies of the Aït Mzal, of the Ida Ou • [692] Gnidif, of the Aït Wadrim of the mountains; they each bring together 24 representatives who judge crimes in conformity with the ᶜorf (1).

*634 619 692 184 682 671 [613]

1. In these tribal councils the conditions under which the customary law is applied in case of murder let the laxity of the social institutions be perceived. Among the Ida Ou Gnidif, for example, the inflas friends of the murderer give back to his family the part of the fine that comes to them out of the sum imposed by the tribe. Each one supports his brothers; the "ikhs" are stronger than the tribe. Often, it is true, the customary law foresees this situation, and the ᶜorf intervenes to condemn to increased fines the inflas who try to vouch for their brothers or appeal for them to outside authorities.

Thus each of the council members is ceaselessly impelled in two opposite directions: the duty to protect his brothers or the brothers of his friends, and the desire to take part in the distribution of the goods of the guilty. His conduct is inspired by the circumstances.

/229 cont./

*634 619 .692 VII. The justice circuits. -- When the cantons are thus grouped so as to constitute a veritable tribe, made up of a certain number of small autonomous units, they often proceed with circuits of justice carried out in the whole territory, in the course of which all the infractions committed during the year are investigated and punished. All the forces of the tribe then come to lend their support to each of the cantons, in order to facilitate the rapid settlement of differences without any danger to internal peace resulting from it.

*634 619 692 184 178 This custom, observed not long ago among the Igezzoulen of the western Anti-Atlas, is still very much alive in the confederation of the Ida Ou Tanan, among the Aït Ouᶜazzoun and the Ifesfasen. The circuit of justice is carried out by following a minutely observed ceremonial. Among the Aït Ouᶜazzoun, for example, a tribe made up of 15 "afous" or fractions, each "afous" first assembles ten Aït Arbaᶜin, who designate a representative. [625] The 15 delegates of the "afous" thus named deliberate apart and form the /230/ council of the "imzran" (1),

1. From the Berbère /Berber/ "zer," to see. The word, like that of Aït Arbaᶜin, has no singular. In order to designate one of the members, one says "ian gh imzran," one of the "imzran."

while the mass of the Aït Arbaᶜin of all the fractions together constitutes a police force capable of having all the decisions carried out. The whole takes the name of "ajmoᶜa" of the Aït Ouᶜazzoun. Thus formed, the "ajmoᶜa" goes first of all among the Aït Wanzig, who are the "inflas el khir" or "porte-bonheur" of the Aït Ouᶜazzoun tribe. For a day and a night the council investigates all the cases of theft or murder committed during the year and of which an account has been carefully kept by the notables [695] and which the taleb has noted in writing. The guilty are summoned, [681] heard, condemned to be fined, and they pay on the spot

*634 /230 cont./
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•692 pledges consisting of a certain number of guns. If the guilty
184 ones are marabouts, who do not have guns, they pay a fine in
178 the form of animals destined for the common meals. The next
[695] day, the "ajmoᶜa" moves on, following a traditionally fixed
[681] itinerary, and stops for two or three days, according to the size
[792] of the fractions. One night is spent at the zaouia of Sidi Brahim
[782] Ou ᶜAli, religious center of the confederation, where a solemn
sacrifice is offered to the saint. Finally, the circuit of justice
ends in the cantons of the north, and on the last day, at the
zaouia of Issouqal, the guilty ones come to pay their fines and
take back the guns they had pledged. The marabouts who played
[431] the role of conciliators or advisors receive gifts, and a sacrifice
[782] is offered to the saint of Issouqal. Then the remaining money is
[652] immediately divided into two halves; one goes to the "imzran,"
the other to the fractions represented by the Aït Arbaᶜin.

One conceives what difficulties are presented for making order prevail in the small republics incapable of naming moqaddem, and which cannot, in order to put an end to the disputes of rival "ikhs," always threatening, unite with their neighbors to carry out circuits of justice with large forces. Left to themselves, they become sources of agitation and private wars, unless a leader succeeds in imposing his will on the turbulent assembly of the Aït Arbaᶜin. Among the Ida Ou Tanan such is the fate of the isolated fractions of the Aït Wanoukrim, Aït Oulma, Iberouten, in the tribe of the Ifesfasen, which possess neither moqaddem nor powerful "ajmoᶜa" capable of having /231/ the decisions of the notables applied. The inhabitants try to constitute, after a fashion, by their own means, an "ajmoᶜa" to which come all the men under arms; but for lack of a tradition as respected as that of the Aït Ouᶜazzoun, the "ajmoᶜa" often ends in fights.

*634 A similar example of impotence is given us in the heart of
184 the Masmouda country by the little "taqbilt" of the Aït Tigidar,
in the Asif el Mal, also endowed with a democratic constitution
without moqaddem, amidst neighboring fractions that are more
[578] pacific and better organized. Discords multiplied to such a point
[361] in this small territory that the village of Assals, political center

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/footnote 1 continued/ paid for by buyers and sellers and maintaining the "tribal treasury." The case is exceptional in tribes living under a democratic constitution.

*[634] In this case the inflas sit permanently in a large shop and judge all the offenses that come to their knowledge. But most often, even when the fractions live by observing republican constitutions, it is a rich and powerful man who alone is capable of imposing respect for the decisions taken with regard to the guilty and of acting without delay against the highway thieves. The existence of the market thus favors the development of personal power, and it is by "commanding over the souq" that a leader best shows his prestige and worth.

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It also happens that the authority of the assemblies of inflas succeeds in being exerted more easily on the souqs by calling on a maraboutic authority. The markets of Lalla ᶜAziza among the Seksawa, of the "Jemaᶜa" of the Aït Daoud near the tomb of Sidi Saᶜid Ou ᶜAbd en Naᶜim among the Haha, are protected not only by the tribes, but also by the local saints, whose "tagat," curse, would strike down profaners pitilessly. In all the South, as moreover in the rest of Morocco, it is also in the vicinity of the most [778] venerated sanctuaries, such as Lalla ᶜAziza of the Seksawa, Sidi Mehend Ouchchen of the Haha, Sidi Bihi of the Chtouka, Sidi Yahya ben ᶜAbd en Naᶜim of the Aït Tamment, Sidi Ahmed Ou Mousa of the Tazerwalt, and many others besides that the great fairs of spring or autumn, known by the name of "mouggar" (2).

2. From the verb "miggir," to meet (Destaing, Vocabulaire français berbère /French-Berber Vocabulary/, dialect of the Ida ou Semlal, Paris, 1920, p. 246). Fair: "anmuggar" (ibid., p. 131).

are held. These annual festivals attract the inhabitants of all the

*634 /323 cont./
554 of the legends has flown; the government of men has become a
178 serious and positive thing, and the montagnards well know that
791 for them the Iron Age has come.

792 Moreover, shorfa /shurfa/ and marabouts have diverted to
791 their advantage the current of popular forces that willingly
554 carries to the top rank the personages capable of entering into
178 relations with the hidden universe. Islam has obtained what it
[212] could utilize of the old beliefs; in our day it is the tolba, the
[796] scholars, the saints, the descendants of the prophet, and not the
*[634] amghars, who know the fearsome secrets and possess a mysterious
175 power. The true successors to the magician-kings -- if they have
791 ever existed /324/ in Berbère /Berber/ country -- would be,
792 rather, in the Moroccan South, the sons of Sidi Ahmed ou Mousa,
554 who for a long time exercised command of the tribes of the Igez-
zoulen, whose astonishing power Saugnier described at the end of the eighteenth century in these terms:

"This man without troops at his orders," says he of the sherif of the Tazerwalt, "is nevertheless the most powerful in all Africa; his authority is limitless. If he orders war against the Emperor of Morocco, he is obeyed; the war ceases when he wishes. Without
[431] private possessions, he has all in his power. Each family gives him a present every year; they exert themselves in the desire to make it considerable. He renders justice to everyone; he submits
• [692] the accusations to his council and, some days later, definitively pronounces a verdict: he requires nothing of anybody, and everybody gives to him[1] (1).

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1. Relation des voyages de Saugnier /Account of Saugnier's Travels/, pp. 119, 120.

In the nineteenth century, up to the end of the reign of Moulay el Hasan, Sidi Hicham and his son kept this tradition. Inheritors of the royal power established by Sidi ʿAli, they preserved strange customs in their fortress of Illigh. Such a one is
[224] that celebrated hunt each Saturday by the sherif, who, to please
[541] God, must kill the greatest possible number of wild animals; the

175 /343 cont./
*631 crushing power of the new domination (1).
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1. Casbah of Taliwin of the Souktana.

*631 VIII. The companions of the great chief. -- For the admin-
*634 istration of the conquered tribes, the independent amghar depends
602 at the beginning on the notables and the members of the jema'a
613 of the small canton of which his father was formerly the chief. It is within these "ikhs," faithfully attached to his family from the beginning, that he chooses most especially the functionaries of the little state that he has created. He has found among them first of all the expedition leaders and the loyal mokhaznis, charged with forcibly keeping the conquered villages in submis-
*631 sion. When his power is confirmed by the Sultan, he soon tries
*634 to find among these earliest companions a cadi who will be able
693 to render justice favorable to the interests of the new government.
[648] This scholar, who at the same time will be the /344/ kaid's secre-
[671] tary, will most often prove to be the resolute enemy of the Ber-bère /Berber/ customary law, whose roots go down into a danger-ous past of democratic institutions. He will settle most of the disputes according to his master's instructions, and the infallible justice of the holy book will serve to legitimize in all circum-stances the decisions of the temporal leader. Sometimes, too,
*631 according to the rank of the plaintiffs or the personal interest that
*634 the kaid takes in the settling of affairs, justice will be rendered,
[692] without any formality, by the makhzen /makhzan/ leader himself, seated on the threshold of his house. To free himself from all the petty affairs that give no profit, the kaid will choose a caliphate and a "mchaouri" /see "mechaouri," p. 440/, a kind of close advisor, information agent, and intermediary, charged besides with the command of his personal guard.

*631 The casbah, which has become a caravansary, fortress, store-
712 house, and castle at the same time, is administered by an "amin,"
*634 who is both major-domo and keeper of the provisions. The in-
[574] numerable guests who crowd together in the courtyard and stay sometimes for a long time while waiting for an audience with the

4: Hoffman E-4 (no date) 1967 MW11 Shluh MW11 (ca. 1900)

as the *'adat* or *'urf*, the distinction between these two words being somewhat confused. Customary law is consulted in all civil cases (such as disputes regarding terrain, water rights, inheritance, etc.), and in minor criminal matters – the customary law having been replaced by a French-sponsored penal code in most aspects of criminal law since the establishment of the Protectorate. This customary law is established and revised by the local representative councils of each region; it may be administered either by them or by a designated arbiter (*annezzarfou*), this arbiter being required to have a great knowledge of the local law, and to be an intelligent and experienced man highly regarded by all. If possible, he should be a stranger to the group involved, or else divorced from its mundane affairs by virtue of being a holy man (Johns Hopkins University, 1956, pp. 231-232; Loubignac, 1942, p. 281).

The most important aspects of the *azrif* are water rights and (formerly) penal crimes such as theft, abduction of women, adultery, wounds, blows, and murder. Water rights are still carefully regulated by the *'urf* or customary law of each group. Among the Beni Uriaguel (99), for example, the *qanuns* or edicts of customary law dealing with irrigation carefully take into account the nature of flow in different rivers. Thus, on the Lower Rhis, in the Plain of Alhucemas, where the flow is constant but not altogether sufficient, the *qanuns* state that any man who purchases land must buy his irrigation turn independently. In the case of the Nekor River which is extremely erratic, the *qanuns* provide that the purchaser of land is automatically entitled to irrigation water, because most of the year there is sufficient quantity for all. Throughout the Berber areas litigation regarding water rights is kept at a minimum through the existence of water administrators (known as *amazzal*, pl. *imazzalen*, among the Shluh) who distribute the irrigation water in accordance with the recognized rights (Hart, 1954, pp. 56-57).

In its application to criminal acts the Berber *azrif* was characterized by great dependence upon oaths and upon the imposition of fines. This first feature (oaths) was the principal reason for the Berber court usually meeting in a mosque or at a market with an associated shrine, for in all cases the litigants swear by something to give efficacy to their oaths, and this is generally something which has

4: Hoffman E-4 (no date) 1967 MW11 Shluh MW11 (ca. 1900)

among the *imggilla* have actually to swear, and who is to swear first; and it may be that only one of them is required to swear. In the case of homicide the *imggilla* are fifty, out of whom ten, called *imnqqarn*, are chosen by the accuser. If any of these refuses to swear, the suspected person is considered guilty of the crime; hence it frequently happens that the accuser by bribery induces some kinsman of the latter to refuse to act as conjurator. If a theft has been committed the evidence of witnesses is accepted, but they must actually have seen the commission of the theft and they must all be men. In the case of homicide, on the other hand, testimony can bring about conviction only if the perpetrator of the crime is publicly known... (Westermarck, 1926, Vol. 1, pp. 511-513).

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Not only did the nature of the alleged crime determine the number of required conjurators, but also the nature of the adjudicating body. Thus Coon (1931, pp. 99-106) found the following division of responsibilities among the councils of the Rif.

[692]

Village Council

Theft of eggs and of poultry,
Theft of maize,
Illegal cutting of maize in adjoining terraces,
Breaking branches of fruit-trees,
Trampling vegetable gardens,
Theft in orchards,
Illegal starting of grape picking,
Illegal picking of windfall olives,
Theft of olives,
Trespassing in order to pick grass,
Letting stray goats and cattle in the cemetery,
Failure to repair irrigation ditches,
Failure to provide for exiles from other *fifths*,
Failure to contribute to entertainment of councillors of other tribes,
Entering council chamber unbidden,
Conversing with women,
Entering a cemetery occupied by women,
Entering a saint's tomb occupied by women,
Fighting with the hands,
Speaking to the enemy.

Commune Council

Failure to support village council,
Entering a women's market,
Adultery which the injured husband does not discover in the act,
Theft of livestock,
Fighting with sticks,

4: Hoffman E-4 (no date) 1967 MW11 Shluh MW11 (ca. 1900)

•00 Shooting at a man but missing him,
Collection of blood money,
Failure to attend weddings outside the commune,
Speaking to women in market.

Tribal Council

Adultery caught in the act,
Wounding,
Murder.

681 The nature of the crime also determines the fine imposed. All [685] *'urfs* on record are for the most part long lists of fines for infractions [623] of various rules. If the crime is theft, the fine also varies according [634] to the value of the object stolen. These fines are generally paid to [635] the *jemaa* having jurisdiction over the case. Thus, in Nesrat the [171] fine paid by the respondant of a division of the *ksar* to the *amghar n l'amt* accrues to the members of the superior council (Johns Hopkins University, 1956, p. 232; La Chapelle, 1929, pp. 32-33).

682 This system of jurisprudence, while functioning satisfactorily in most cases, often broke down when the crime was homicide, either because the initial act caused such immediate reprisal and developed into a war so quickly that the councillors found themselves fighting on one side or another before they could call a meeting, or because the tribal council lacked the power to enforce its decision. This • 692 situation was forestalled somewhat among some of the Shluh tribes through the institution of annual "rounds of justice".

•00 ... Lorsque les cantons [districts] sont ainsi groupés de manière à constituer une véritable tribu, formée d'un certain nombre de petites unités autonomes, on procède souvent à des tournées de justice exécutées dans tout le territoire, au cours desquelles toutes les infractions commises pendant l'année sont examinées et punies. Toutes les forces de la tribu viennent alors prêter leur appui à chacun des cantons pour faciliter le règlement rapide des différends sans qu'il en résulte aucun danger pour la paix intérieure.

Cette coutume, naguère observée chez les Igezzoulen de l'Anti-Atlas occidental, est encore très vivante dans la confédération des Ida Ou Tanan, chez les Ait Ou'azzoun [545] et les Ifesfasen [544]. La tournée de justice est accomplie en suivant un cérémonial minutieusement observé. Chez les Aït Ou'azzoun, par exemple, tribu formée de quinze "afous" ou